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SAN PASQUAL CASINO DEVELOPMENT GROUP INC., an enterprise  
 fund of the San Pasqual Band of Mission Indians, a  
 Federally-Recognized Indian Tribe

**UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA**

SAN PASQUAL CASINO DEVELOPMENT  
 GROUP INC., an enterprise fund of  
 the San Pasqual Band of Mission  
 Indians, a Federally-Recognized  
 Indian Tribe,

Plaintiff,

vs.

VIEJAS BAND OF KUMEYAAY INDIANS,  
 a Federally-Recognized Indian  
 Tribe d/b/a Viejas Casino

Defendant.

Case No. **'11CV1983 JAH POR**

**COMPLAINT FOR TRADEMARK  
 INFRINGEMENT, COPYRIGHT  
 INFRINGEMENT, AND UNFAIR  
 COMPETITION**

DEMAND FOR JURY TRIAL

Plaintiff SAN PASQUAL CASINO DEVELOPMENT GROUP INC.  
 ("SPCDG") alleges as follows against Defendant VIEJAS BAND OF  
 KUMEYAAY INDIANS d/b/a Viejas Casino ("Viejas"), on personal  
 knowledge as to Plaintiff's own activities and on information  
 and belief as to the activities of others, as follows:

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**NATURE OF THE CASE**

1. This is an action for common law trademark infringement; common law trade dress infringement; unfair competition under the laws of the United States (codified at 15 U.S.C. § 1117, *et seq.*); unfair competition under California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200; common law unfair competition; and copyright infringement under the Copyright Act of 1976, as amended (codified at 17 U.S.C. § 101 *et seq.*).

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**JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a), and 1362.

3. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to the provisions of 28 U.S.C. § 1338(b) insofar as the claims are joined with a substantial and related federal claim arising under the trademark laws of the United States. See 15 U.S.C. § 1051 *et seq.*

4. This Court has personal jurisdiction over Defendant at least because Defendant has substantial contacts in the State of California related to the claims in this action and Defendant

1 engaged in the wrongful acts alleged herein in the State of  
2 California.

3 5. Venue is proper in this judicial district pursuant to  
4 28 U.S.C. §§ 1391(b)(2) and 1400(a).

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6 **PARTIES**

7 6. Plaintiff is a wholly-owned, tribally chartered  
8 corporation formed under the laws of the San Pasqual Band of  
9 Mission Indians, a federally recognized Indian tribe.  
10 Plaintiff's headquarters and principal business address are at  
11 16300 Nyemii Pass Road, Valley Center, California 92082.

12 7. Defendant is a federally recognized Indian tribe with  
13 its headquarters and principal business address at 5000 Willows  
14 Road, Alpine, California 91901.

15 8. Plaintiff and Defendant each operate competing casinos  
16 in the San Diego area. Plaintiff is responsible for the  
17 operation, management and development of Valley View Casino &  
18 Hotel ("Valley View"), which is located approximately one hour  
19 north of San Diego at 16300 Nyemii Pass Road, Valley Center,  
20 California 92082. Defendant's casino, Viejas Casino, is located  
21 approximately forty minutes east of San Diego, at 5000 Willows  
22 Road, Alpine, California 91901. Both Valley View and Viejas  
23 Casino are listed as San Diego-area casinos on the City of San  
24 Diego's website, [www.sandiego.com](http://www.sandiego.com), along with Barona Casino,  
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1 Harrah's Rincon Casino and Resort, Pala Casino Spa & Resort,  
2 Pechanga Resort & Casino, and Sycuan Casino.

3 **STATEMENT OF FACTS COMMON TO ALL COUNTS**

4 **Plaintiff's Intellectual Property**

5 9. Valley View opened on April 18, 2001, marking a  
6 milestone in the history of Plaintiff's tribe. Plaintiff was  
7 formed on November 20, 2004 and thereafter assumed exclusive  
8 responsibility for the operation, management and development of  
9 Valley View. In the ten years since Valley View opened,  
10 Plaintiff and its Tribe have invested significant capital and  
11 time to make Valley View the premier gaming destination it is  
12 today. As part of these efforts, Plaintiff has created, sought  
13 and obtained protection for, and enforced an impressive  
14 intellectual property portfolio, which includes trademarks,  
15 service marks, trade dress, and copyrights.

16 10. To succeed in the crowded San Diego-area market,  
17 Plaintiff has undertaken several steps to set itself apart from  
18 its competitors. One such effort is Plaintiff's all-you-can-eat  
19 lobster buffet, marketed under the mark PINCH YOURSELF since at  
20 least September 2009. Since the campaign began, Plaintiff has  
21 used and displayed the PINCH YOURSELF mark in the sale and  
22 advertising of its services, which include bar and restaurant  
23 services, gaming and casino services, and customer loyalty and  
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1 customer club services. Plaintiff prominently featured its  
2 PINCH YOURSELF mark in a wide variety of advertisements,  
3 including: on postcards; on the NBC San Diego website; in  
4 various issues of the *San Diego Reader*, *Casino Player* magazine,  
5 *Riviera* magazine, and *Inland Empire* magazine; in multiple issues  
6 of Plaintiff's *Valley View Casino Newsletter*; on multiple local  
7 billboards; and on T-shirts. As a result of Plaintiff's use of  
8 its PINCH YOURSELF mark, Plaintiff's all-you-can-eat lobster  
9 buffet has been a resounding success, and consumers have come to  
10 recognize PINCH YOURSELF as an indicator of Plaintiff's goods  
11 and services. Plaintiff's PINCH YOURSELF mark is often  
12 displayed with a claw "pinching" the mark.  
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15 11. In another step to set itself apart from the  
16 competition, Plaintiff created in house a pair of television  
17 commercials advertising and promoting Valley View: "Hotel  
18 Branding," subtitled "L'Amore Valley View Casino #1"  
19 (hereinafter "L'Amore #1 Commercial"); and "VIEW0411," subtitled  
20 "L'Amore Valley View Casino #2" (hereinafter "L'Amore #2  
21 Commercial") (collectively, "the L'Amore Commercials").  
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23 12. Both L'Amore Commercials feature a distinctive  
24 combination of elements that serve to identify and distinguish  
25 Plaintiff's goods and services from those of others and to  
26 indicate the source of Plaintiff's goods and services, namely:  
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- a. The use of a catchy piece of music with a driving beat;
- b. The complete absence of spoken narration;
- c. The use of multiple short vignettes that rapidly change while simultaneously giving the impression of a slow, sweeping panoramic view;
- d. The use of white, sans-serif font text moving across the images of the vignettes; and
- e. The use of emphasis on particular words that, in conjunction with the underlying images, evoke particular moods and create the sense that Plaintiff's casino is sophisticated, indulgent, luxurious, opulent, and sexy, yet refined (collectively, "the L'Amore Trade Dress").

13. Both L'Amore Commercials feature a unique selection and arrangement of expressive elements, namely:

- a. Artistic choices as to the shooting and editing of multiple short vignettes that rapidly change while simultaneously giving the impression of a slow, sweeping panoramic view, the vignettes portraying different aspects of Plaintiff's casino including slot machines, table games, fine dining, gourmet food, and hotel services;

1 b. Artistic choices as to camera angles, particularly as  
2 to mixing wide-angled, slowly-sweeping shots with  
3 tightly focused, close-up shots;

4 c. Artistic choices as to lighting, particularly as to  
5 using low light in certain vignettes to create a  
6 moody, opulent ambience;

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8 d. Selection and arrangement of words in white, san-serif  
9 font that scroll across the vignettes, particular  
10 words emphasized to create the sense that Plaintiff's  
11 casino is sophisticated, indulgent, luxurious,  
12 opulent, and sexy, yet refined;

13 i. With respect to the L'Amore #1 Commercial,  
14 emphasis on the word "insatiable" in conjunction  
15 with an image of fine food, conveying the feeling  
16 that Plaintiff's casino offers rich, decadent  
17 dining experiences;

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19 ii. With respect to the L'Amore #1 Commercial,  
20 emphasis on the word "exciting" in conjunction  
21 with an image of a table game, conveying the  
22 feeling that Plaintiff's casino offers fun and  
23 excitement to its patrons;

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25 e. Artistic choices as to the audio component of the  
26 commercials, namely

- i. A complete absence of spoken narration;
  - ii. The use of scrolling text across the vignettes in the place of spoken narration; and
  - iii. The use of a catchy piece of music with a driving beat;
- f. Artistic choices as to pacing such that a sense of excitement is created, with
  - i. 17 different vignettes shown over the course of the L'Amore #1 Commercial's thirty seconds, each vignette lasting on average 1.76 seconds; and
  - ii. 18 different vignettes shown over the course of the L'Amore #2 Commercial's thirty seconds, each vignette lasting on average 1.72 seconds;
- g. Artistic choices as to the characters portrayed, with couples shown in addition to groups of people and with no particular person, couple, or group of people developed;
  - i. With respect to the L'Amore #1 commercial, artistic choices as to the portrayal of winning characters, with only female characters clearly shown winning the casino's games; and
- h. Artistic choices as to the sequence of the vignettes, namely, a seemingly random intermixing of the



1 different vignettes without any clear, natural  
2 progression in storyline (collectively, "the L'Amore  
3 Expressive Elements").

4 14. Plaintiff's L'Amore #1 Commercial first aired in San  
5 Diego, Orange, Los Angeles, Riverside, Ventura, Santa Barbara,  
6 and San Bernandino Counties (collectively, "the Southern  
7 California Market") on February 7, 2011. Plaintiff's L'Amore #2  
8 Commercial first aired in the Southern California Market on  
9 April 11, 2011. Since their first airings, both commercials  
10 have run thousands of times. As of the filing of this  
11 Complaint, both commercials are still airing in the Southern  
12 California Market. Additionally, both L'Amore Commercials have  
13 been posted on Plaintiff's YouTube Channel, "VVCasinoHotel,"  
14 since late April 2011.

15 15. Plaintiff's efforts to set itself apart, including  
16 through the use of its PINCH YOURSELF mark and its L'Amore  
17 Commercials, have paid off: In its "2011 Best of Gaming" issue,  
18 *Casino Player* Magazine recognized Plaintiff as the Best Overall  
19 Gaming Resort in California, and awarded Plaintiff its sixth  
20 consecutive Best Buffet title for Plaintiff's all-you-can-eat  
21 lobster buffet.

22 16. On August 10, 2011, Plaintiff applied for federal  
23 trademark registration of its PINCH YOURSELF mark: (a) Ser. No.

1 85/394,831 for customer loyalty services and customer club  
2 services, for commercial, promotional and/or advertising  
3 purposes, first used in commerce in connection with the  
4 identified services at least as early as December 2010; (b) Ser.  
5 No. 85/394,805 for restaurant; hotel, bar and restaurant  
6 services; hotel accommodation services; hotel services for  
7 preferred customers; hotel, restaurant and catering services;  
8 bar and restaurant services; cafe and restaurant services; and  
9 restaurant services, first used in commerce in connection with  
10 the identified services at least as early as September 2009; and  
11 (c) Ser. No. 85/394,796 for entertainment services, namely,  
12 casino gaming; gaming services in the nature of casino gaming;  
13 casino services; and entertainment services, namely, live  
14 appearances by a professional entertainer, first used in  
15 commerce in connection with the identified services at least as  
16 early as September 2009. As of the filing of this Complaint,  
17 Plaintiff's trademark applications remain pending.  
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20 17. Also on August 10, 2011, Plaintiff sent the following  
21 applications for copyright registration, along with a deposit  
22 and fee, to the United States Copyright Office: (a) Case # 1-  
23 646798370 for the L'Amore #1 commercial, and (b) Case #1-  
24 646798471 for the L'Amore #2 commercial. Plaintiff's  
25 applications were both received by the Copyright Office on or  
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1 about August 10, 2011. As of the filing of this Complaint,  
2 Plaintiff's copyright applications remain pending.

3 **Defendant's Infringement and Misappropriation of Plaintiff's**  
4 **Intellectual Property**

5 18. By letter dated February 17, 2011, Plaintiff  
6 contacted Defendant regarding unauthorized use of one of  
7 Plaintiff's registered trademarks by Defendant. By email dated  
8 March 1, 2011, Defendant's then General Manager indicated that  
9 Defendant would cease use of the mark.

10 19. On or about August 3, 2011, Defendant launched an  
11 advertising campaign whereby Defendant marketed an all-you-can-  
12 eat snow crab buffet under the mark PINCH YOURSELF. Defendant  
13 announced its campaign via press releases posted on several  
14 national websites, including [www.reuters.com](http://www.reuters.com), [www.cnbc.com](http://www.cnbc.com),  
15 [www.businesswire.com](http://www.businesswire.com), [finance.yahoo.com](http://finance.yahoo.com), and  
16 [www.allbusiness.com](http://www.allbusiness.com), as well as through several postings on  
17 Defendant's page on [www.facebook.com](http://www.facebook.com) and Defendant's own  
18 website, [www.viejas.com](http://www.viejas.com). Defendant also created a commercial  
19 for its campaign that prominently features the PINCH YOURSELF  
20 mark, which was posted on at least Defendant's [www.facebook.com](http://www.facebook.com)  
21 page. In several instances, Defendant uses PINCH YOURSELF with  
22 an image of a claw "pinching" the mark.  
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25 20. Sometime around July 16, 2011, Defendant first aired a  
26 television commercial, with the opening verbiage "Are you ready  
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1 to play?", advertising and promoting its casino (hereinafter  
2 "the Viejas Commercial").

3 21. The Viejas Commercial features the same or a similar  
4 combination of elements as the L'Amore Trade Dress, namely:

5 a. The use of a catchy piece of music with a driving  
6 beat;

7 b. A complete absence of spoken narration;

8 c. The use of multiple short vignettes that rapidly  
9 change while simultaneously giving the impression of a  
10 slow, sweeping panoramic view;

11 d. The use of white, sans-serif font text moving across  
12 the images of the vignettes; and

13 e. The use of emphasis on particular words that, in  
14 conjunction with the underlying images, evokes  
15 particular moods and creates the sense that  
16 Defendant's casino is sophisticated, indulgent,  
17 luxurious, opulent, and sexy.

18 22. The Viejas Commercial also features a substantially  
19 similar selection and arrangement of expressive elements as  
20 those seen in the L'Amore Commercials, namely:

21 a. Artistic choices as to the shooting and editing of  
22 multiple short vignettes that rapidly change while  
23 simultaneously giving the impression of a slow,  
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1 sweeping panoramic view, the vignettes portraying  
2 different aspects of Defendant's casino including slot  
3 machines, table games, fine dining, and gourmet food,  
4 the vignettes further giving the impression that  
5 Defendant offers hotel services through the use of two  
6 ambiguous scenes showing a card that could be mistaken  
7 for a hotel room key card even though Defendant does  
8 not offer hotel services;  
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10 b. Artistic choices as to camera angles, particularly as  
11 to mixing wide-angled, slowly-sweeping shots with  
12 tightly focused, close-up shots;  
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14 c. Artistic choices as to lighting, particularly as to  
15 using low light in certain vignettes to create a  
16 moody, opulent ambience;  
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18 d. Selection and arrangement of words in white, san-serif  
19 font that scroll across the vignettes, particular  
20 words emphasized to create the sense that Defendant's  
21 casino is sophisticated, indulgent, luxurious,  
22 opulent, and sexy;

23 i. In substantial similarity to the L'Amore #1  
24 Commercial, emphasis on the word "indulge" in  
25 conjunction with an image of fine food, conveying  
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1 the feeling that Defendant's casino offers rich,  
2 decadent dining experiences;

3 ii. In substantial similarity to the L'Amore #1  
4 Commercial, emphasis on the word "excitement" in  
5 conjunction with an image of a table game,  
6 conveying the feeling that Defendant's casino  
7 offers fun and excitement to its patrons;  
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9 e. Artistic choices as to the audio component of the  
10 Viejas Commercial, namely

11 i. A complete absence of spoken narration;  
12 ii. The use of scrolling text across the vignettes in  
13 the place of spoken narration; and  
14 iii. The use of a catchy piece of music with a driving  
15 beat;  
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17 f. Artistic choices as to pacing such that a sense of  
18 excitement is created, with 19 different vignettes  
19 shown over the course of the Viejas Commercial's  
20 thirty seconds, each vignette lasting on average 1.67  
21 seconds;  
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23 g. Artistic choices as to the characters portrayed, with  
24 couples shown in addition to groups of people, with no  
25 particular person, couple, or group of people  
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1 developed, and with only female characters clearly  
2 shown winning the casino's games; and

3 h. Artistic choices as to the sequence of the vignettes,  
4 namely, a seemingly random intermixing of the  
5 different vignettes without any clear natural  
6 progression in storyline.  
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8 23. Defendant's Viejas Commercial aired approximately five  
9 months after the L'Amore #1 Commercial first aired, and  
10 approximately three months after the L'Amore #2 Commercial first  
11 aired. The Viejas Commercial has aired in at least the Southern  
12 California Market.

13 24. Between August 10, 2011, and August 17, 2011,  
14 Plaintiff sent letters to Defendant regarding Defendant's  
15 infringement and misappropriation of the PINCH YOURSELF mark and  
16 the L'Amore Commercials and requesting that Defendant cease its  
17 PINCH YOURSELF campaign and pull the Viejas Commercial.  
18 Defendant refused to do so.  
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20 25. Because of Defendant's apparent concerted effort to  
21 continue a pattern of copying and infringing Plaintiff's  
22 intellectual property for the purpose of trading off Plaintiff's  
23 goodwill, this Complaint necessarily follows.  
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**COUNT 1**

**Common Law Trademark Infringement of the PINCH YOURSELF Mark**

26. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 25 of this Complaint as if fully set forth herein.

27. Plaintiff has continuously used the PINCH YOURSELF mark in commerce in connection with Plaintiff's services, including in connection with Plaintiff's all-you-can-eat lobster buffet, since at least as early as September 2009 and, accordingly, has established common law trademark rights in the PINCH YOURSELF mark.

28. Defendant's unauthorized use in commerce of the PINCH YOURSELF mark in association with Defendant's all-you-can-eat snow crab buffet constitutes infringement of Plaintiff's common law trademark rights, misappropriates the valuable goodwill developed by Plaintiff in the PINCH YOURSELF mark, and is likely to cause confusion among the relevant consuming public.

29. Defendant was, or should have been, aware of Plaintiff's use of and corresponding rights in the PINCH YOURSELF mark. Defendant's acts aforesaid, including using names, terms, and/or marks that are identical or, at least, confusingly similar to Plaintiff's PINCH YOURSELF mark for identical or substantially similar goods and services,



1 constitute willful infringement of Plaintiff's rights in the  
2 PINCH YOURSELF mark.

3 30. Defendant's acts of willful infringement of  
4 Plaintiff's rights in the PINCH YOURSELF mark have caused and,  
5 unless restrained, will continue to cause great and irreparable  
6 injury to Plaintiff, Plaintiff's business, and to the goodwill  
7 and reputation of Plaintiff in an amount that cannot be  
8 ascertained at this time, leaving Plaintiff no adequate remedy  
9 at law.

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11 31. Defendant's acts are the proximate cause of such  
12 injury and damage.

13 32. By reason of the foregoing, Plaintiff is entitled to  
14 preliminary and permanent injunctive relief against Defendant,  
15 and anyone acting in concert with Defendant, to restrain further  
16 acts of infringement of Plaintiff's rights and, after trial, to  
17 recover any damages proven to have been caused by reason of  
18 Defendant's aforesaid acts of infringement and any enhanced  
19 damages justified by the willful and intentional nature of such  
20 acts.  
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**COUNT TWO**

**Federal Unfair Competition with Respect to the PINCH YOURSELF  
Mark  
(15 U.S.C. § 1125)**

33. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 32 of this Complaint as if fully set forth herein.

34. By its knowing and intentional unauthorized imitation, adoption, and use of Plaintiff's PINCH YOURSELF mark and/or marks which are confusingly similar to Plaintiff's PINCH YOURSELF mark in association with Defendant's goods and services, Defendant has and continues to falsely designate its goods and services as being derived or affiliated with those of the Plaintiff.

35. Defendant's use of the PINCH YOURSELF mark is likely to cause and/or has caused relevant consumers to mistakenly believe that Defendant has an affiliation with Plaintiff, that Defendant's business is sponsored or approved by Plaintiff, or that Defendant is otherwise associated with or has obtained permission from Plaintiff to use the PINCH YOURSELF mark in connection with the sale of Defendant's goods and services.

36. By engaging in the unauthorized activities described above, Defendant has made, and continues to make, false, deceptive, and misleading statements constituting false representations and false advertising made in connection with

1 the sale of goods or services distributed in interstate commerce  
2 in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §  
3 1125(a). Furthermore, in view of the notices provided to  
4 Defendant by the acts of Plaintiff, such activities were, and  
5 remain, willful and intentional.  
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7 37. Defendant's willful and intentional acts of unfair  
8 competition, false advertising, and false designation of origin,  
9 have caused and are causing great and irreparable injury and  
10 damage to Plaintiff's business and its goodwill and reputation  
11 in an amount that cannot be ascertained at this time and, unless  
12 preliminarily and permanently restrained, will cause further  
13 irreparable injury and damage, leaving Plaintiff with no  
14 adequate remedy at law.  
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16 38. By reason of the foregoing, Plaintiff is entitled to  
17 injunctive relief against Defendant, and anyone acting in  
18 concert with Defendant, to restrain further acts of unfair  
19 competition, false advertising, and false designation of origin  
20 and, after trial, to recover any damages proven to have been  
21 caused by reason of Defendant's aforesaid acts, and to recover  
22 enhanced damages based on Defendant's willful, intentional,  
23 and/or grossly negligent acts.  
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**COUNT THREE**

**Statutory Unfair Competition with Respect to the PINCH YOURSELF  
Mark  
(Cal. Bus. & Prof. Code § 17200)**

39. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 38 of this Complaint as if fully set forth herein.

40. Through its unauthorized use of the PINCH YOURSELF mark, as well as by continuing to engage in a willful and concerted effort to trade on Plaintiff's goodwill copying and/or imitating Plaintiff's PINCH YOURSELF mark, Defendant has engaged in unlawful and unfair business acts or practices in violation of Cal. Bus. & Prof. Code § 17200.

41. Defendant was, or should have been, aware of Plaintiff's use of and corresponding rights in the PINCH YOURSELF mark. Defendant's acts aforesaid constitute willful and intentional violation of Cal. Bus. & Prof. Code § 17200.

42. Defendant's willful and intentional violation of Cal. Bus. & Prof. Code § 17200 has caused and is causing great and irreparable injury and damage to Plaintiff's business and its goodwill and reputation in an amount that cannot be ascertained at this time and, unless preliminarily and permanently restrained, will cause further irreparable injury and damage, leaving Plaintiff with no adequate remedy at law.

1           43. Defendant's acts are the proximate cause of such  
2 injury and damage.

3           44. By reason of the foregoing, Plaintiff is entitled to  
4 injunctive relief against Defendant, and anyone acting in  
5 concert with Defendant, to restrain further violation of Cal.  
6 Bus. & Prof. Code § 17200.  
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8                           **COUNT FOUR**

9                   **Common Law Infringement of the L'Amore Trade Dress**

10           45. Plaintiff repeats and realleges each of the  
11 allegations contained in paragraphs 1 through 44 of this  
12 Complaint as if fully set forth herein.

13           46. Plaintiff's L'Amore Trade Dress is non-functional and  
14 is inherently distinctive or has acquired secondary meaning  
15 through its extensive, exclusive use by Plaintiff and its  
16 association by purchasers with Plaintiff's goods and services.  
17

18           47. Plaintiff has continuously used the L'Amore Trade  
19 Dress in commerce in connection with Plaintiff's goods and  
20 services since at least as early as February 7, 2011, and,  
21 accordingly, has established common law trade dress rights in  
22 the L'Amore Trade Dress.  
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24           48. Defendant's unauthorized use in commerce of the  
25 L'Amore Trade Dress via Defendant's Viejas commercial  
26 constitutes infringement of Plaintiff's common law trade dress  
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1 rights, misappropriates the valuable goodwill developed by  
2 Plaintiff in the L'Amore Trade Dress, and is likely to cause  
3 confusion among the relevant consuming public.

4 49. Defendant was, or should have been, aware of  
5 Plaintiff's use of and corresponding rights in the L'Amore Trade  
6 Dress. Defendant's acts aforesaid, including incorporating  
7 trade dress in its Viejas commercial that is identical or, at  
8 least, confusingly similar to Plaintiff's L'Amore Trade Dress  
9 for identical or substantially similar goods and services,  
10 constitutes willful infringement of Plaintiff's rights in the  
11 L'Amore Trade Dress.  
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13 50. Defendant's acts of willful infringement of  
14 Plaintiff's rights in the L'Amore Trade Dress have caused and,  
15 unless restrained, will continue to cause great and irreparable  
16 injury to Plaintiff, Plaintiff's business, and to the goodwill  
17 and reputation of Plaintiff in an amount that cannot be  
18 ascertained at this time, leaving Plaintiff no adequate remedy  
19 at law.  
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21 51. Defendant's acts are the proximate cause of such  
22 injury and damage.  
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24 52. By reason of the foregoing, Plaintiff is entitled to  
25 preliminary and permanent injunctive relief against Defendant,  
26 and anyone acting in concert with Defendant, to restrain further  
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1 acts of infringement of Plaintiff's rights and, after trial, to  
2 recover any damages proven to have been caused by reason of  
3 Defendant's aforesaid acts of infringement and any enhanced  
4 damages justified by the willful and intentional nature of such  
5 acts.  
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7 **COUNT FIVE**

8 **Federal Unfair Competition with Respect to the L'Amore Trade**  
9 **Dress**  
10 **(15 U.S.C. § 1125)**

11 53. Plaintiff repeats and realleges each of the  
12 allegations contained in paragraphs 1 through 52 of this  
13 Complaint as if fully set forth herein.

14 54. By its knowing and intentional unauthorized imitation,  
15 adoption, and use of Plaintiff's L'Amore Trade Dress and/or  
16 trade dress which is confusingly similar to Plaintiff's L'Amore  
17 Trade Dress in association with Defendant's goods and services  
18 through its Viejas Commercial, Defendant has and continues to  
19 falsely designate its goods and services as being derived or  
20 affiliated with those of the Plaintiff.

21 55. Defendant's use of the L'Amore Trade Dress is likely  
22 to cause relevant consumers to mistakenly believe that Defendant  
23 has an affiliation with Plaintiff, that Defendant's business is  
24 sponsored or approved by Plaintiff, or that Defendant is  
25 otherwise associated with or has obtained permission from  
26

1 Plaintiff to use the L'Amore Trade Dress in connection with the  
2 sale of Defendant's goods and services.

3 56. By engaging in the unauthorized activities described  
4 above, Defendant has made, and continues to make, false,  
5 deceptive, and misleading statements constituting false  
6 representations and false advertising made in connection with  
7 the sale of goods or services distributed in interstate commerce  
8 in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §  
9 1125(a). Furthermore, in view of the notices provided to  
10 Defendant by the acts of Plaintiff, such activities were, and  
11 remain, willful and intentional.  
12

13 57. Defendant's willful and intentional acts of unfair  
14 competition, false advertising, and false designation of origin,  
15 have caused and are causing great and irreparable injury and  
16 damage to Plaintiff's business and its goodwill and reputation  
17 in an amount that cannot be ascertained at this time and, unless  
18 preliminarily and permanently restrained, will cause further  
19 irreparable injury and damage, leaving Plaintiff with no  
20 adequate remedy at law.  
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22 58. Defendant's acts are the proximate cause of such  
23 injury and damage.  
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25 59. By reason of the foregoing, Plaintiff is entitled to  
26 injunctive relief against Defendant, and anyone acting in  
27



1 concert with Defendant, to restrain further acts of unfair  
2 competition, false advertising, and false designation of origin  
3 and, after trial, to recover any damages proven to have been  
4 caused by reason of Defendant's aforesaid acts, and to recover  
5 enhanced damages based on Defendant's willful, intentional,  
6 and/or grossly negligent acts.  
7

8 **COUNT SIX**

9 **Unfair Competition with Respect to the L'Amore Trade Dress**  
10 **(Cal. Bus. & Prof. Code § 17200)**

11 60. Plaintiff repeats and realleges each of the  
12 allegations contained in paragraphs 1 through 59 of this  
13 Complaint as if fully set forth herein.

14 61. Through its unauthorized use of the L'Amore Trade  
15 Dress, as well as by continuing to engage in a willful and  
16 concerted effort to trade on Plaintiff's goodwill by copying  
17 and/or imitating Plaintiff's L'Amore Trade Dress, Defendant has  
18 engaged in unlawful and unfair business acts or practices in  
19 violation of Cal. Bus. & Prof. Code § 17200.  
20

21 62. Defendant's willful and intentional violation of Cal.  
22 Bus. & Prof. Code § 17200 has caused and is causing great and  
23 irreparable injury and damage to Plaintiff's business and its  
24 goodwill and reputation in an amount that cannot be ascertained  
25 at this time and, unless preliminarily and permanently  
26  
27  
28

1 restrained, will cause further irreparable injury and damage,  
2 leaving Plaintiff with no adequate remedy at law.

3 63. Defendant's acts are the proximate cause of such  
4 injury and damage.

5 64. By reason of the foregoing, Plaintiff is entitled to  
6 injunctive relief against Defendant, and anyone acting in  
7 concert with Defendant, to restrain further violation of Cal.  
8 Bus. & Prof. Code § 17200.  
9

10 **COUNT SEVEN**

11 **Copyright Infringement of the L'Amore #1 Commercial**

12 65. Plaintiff repeats and realleges each of the  
13 allegations contained in paragraphs 1 through 64 of this  
14 Complaint as if fully set forth herein.  
15

16 66. Plaintiff's L'Amore #1 Commercial is an original,  
17 independently created, and creative work and is copyrightable  
18 under United States law.

19 67. Plaintiff is the sole owner of the copyright in the  
20 L'Amore #1 Commercial and has applied and paid the fee for  
21 registration of the L'Amore #1 Commercial with the United States  
22 Copyright Office.  
23

24 68. Plaintiff's L'Amore #1 Commercial was widely  
25 disseminated prior to Defendant's creation of the Viejas  
26  
27  
28

1 Commercial such that Defendant had access to the L'Amore #1  
2 Commercial at the time it created the Viejas Commercial.

3 69. Defendant's Viejas Commercial contains specific  
4 similarities to the L'Amore Expressive Elements of Plaintiff's  
5 L'Amore #1 Commercial including similarities in plot, themes,  
6 dialogue, mood, setting, pace, characters, and sequence of  
7 events; has substantially the same total concept and feel as the  
8 L'Amore #1 Commercial; and is accordingly substantially similar  
9 to the L'Amore #1 Commercial.  
10

11 70. Because of Defendant's access to the L'Amore #1  
12 Commercial and because of the substantial similarity between  
13 Defendant's Viejas Commercial and the L'Amore #1 Commercial,  
14 Defendant must have and did copy the L'Amore #1 Commercial and  
15 therefore has infringed and continues to infringe Plaintiff's  
16 copyright in the L'Amore #1 Commercial.  
17

18 71. Defendant was, or should have been, aware of  
19 Plaintiff's copyright in the L'Amore #1 Commercial. Defendant's  
20 acts aforesaid, including its unauthorized copying of the  
21 L'Amore #1 Commercial through its creation of the Viejas  
22 Commercial, constitutes willful infringement of Plaintiff's  
23 copyright in the L'Amore #1 Commercial.  
24

25 72. Defendant's willful and intentional acts of  
26 infringement have caused and are causing great and irreparable  
27

1 injury and damage to Plaintiff's business in an amount that  
2 cannot be ascertained at this time and, unless preliminarily and  
3 permanently restrained, will cause further irreparable injury  
4 and damage, leaving Plaintiff with no adequate remedy at law.

5 73. Defendant's acts are the proximate cause of such  
6 injury and damage.  
7

8 74. By reason of the foregoing, Plaintiff is entitled to  
9 injunctive relief against Defendant, and anyone acting in  
10 concert with Defendant, to restrain further acts of infringement  
11 and, after trial, to recover any damages proven to have been  
12 caused by reason of Defendant's aforesaid acts, and to recover  
13 enhanced damages based on Defendant's willful, intentional,  
14 and/or grossly negligent acts.  
15

16 **COUNT EIGHT**

17 **Copyright Infringement of the L'Amore #2 Commercial**

18 75. Plaintiff repeats and realleges each of the  
19 allegations contained in paragraphs 1 through 74 of this  
20 Complaint as if fully set forth herein.

21 76. Plaintiff's L'Amore #2 Commercial is an original,  
22 independently created, and creative work and is copyrightable  
23 under United States law.  
24

25 77. Plaintiff is the sole owner of the copyright in the  
26 L'Amore #2 Commercial and has applied for and paid the fee for  
27

1 registration of the L'Amore #2 Commercial with the United States  
2 Copyright Office.

3 78. Plaintiff's L'Amore #2 Commercial was widely  
4 disseminated prior to Defendant's creation of the Viejas  
5 Commercial such that Defendant had access to the L'Amore #2  
6 Commercial at the time it created the Viejas Commercial.  
7

8 79. Defendant's Viejas Commercial contains specific  
9 similarities to the L'Amore Expressive Elements of Plaintiff's  
10 L'Amore #2 Commercial including similarities in plot, themes,  
11 dialogue, mood, setting, pace, characters, and sequence of  
12 events; has substantially the same total concept and feel as the  
13 L'Amore #2 Commercial; and is accordingly substantially similar  
14 to the L'Amore #2 Commercial.  
15

16 80. Because of Defendant's access to the L'Amore #2  
17 Commercial and because of the substantial similarity between  
18 Defendant's Viejas Commercial and the L'Amore #2 Commercial,  
19 Defendant must have and did copy the L'Amore #2 Commercial and  
20 therefore has infringed and continues to infringe Plaintiff's  
21 copyright in the L'Amore #2 Commercial.  
22

23 81. Defendant was, or should have been, aware of  
24 Plaintiff's copyright in the L'Amore #2 Commercial. Defendant's  
25 acts aforesaid, including its unauthorized copying of the  
26  
27  
28

1 L'Amore #2 Commercial, constitutes willful infringement of  
2 Plaintiff's copyright in the L'Amore #2 Commercial.

3 82. Defendant's willful and intentional acts of  
4 infringement have caused and are causing great and irreparable  
5 injury and damage to Plaintiff's business in an amount that  
6 cannot be ascertained at this time and, unless preliminarily and  
7 permanently restrained, will cause further irreparable injury  
8 and damage, leaving Plaintiff with no adequate remedy at law.

10 83. Defendant's acts are the proximate cause of such  
11 injury and damage.

12 84. By reason of the foregoing, Plaintiff is entitled to  
13 injunctive relief against Defendant, and anyone acting in  
14 concert with Defendant, to restrain further acts of infringement  
15 and, after trial, to recover any damages proven to have been  
16 caused by reason of Defendant's aforesaid acts, and to recover  
17 enhanced damages based on Defendant's willful, intentional,  
18 and/or grossly negligent acts.

20 **RELIEF REQUESTED**

21 WHEREFORE, Plaintiff SPCDG respectfully prays for the  
22 following relief:

23 A. A preliminary and permanent nationwide injunction  
24 enjoining Defendant, its employees, agents, officers, directors,  
25 attorneys, representatives, successors, affiliates, subsidiaries  
26



1        cause confusion, deception, or mistake in the marketplace  
2        with regard to the L'Amore Trade Dress;

3        B.    An order directing Defendant to deliver up for  
4        impoundment and destruction all materials and matter in its  
5        possession or custody or under its control that infringe  
6        Plaintiff's trademark, trade dress, and copyrights, including,  
7        without limitation, all of Defendant's marketing materials  
8        bearing the PINCH YOURSELF mark and all copies of Defendant's  
9        Viejas Commercial;  
10

11        C.    An order directing that Defendant file with the Court  
12        and serve upon counsel for Plaintiff within thirty (30) days  
13        after the entry of such order or judgment, a report in writing  
14        and under oath setting forth in detail the manner and form in  
15        which Defendant has complied with the injunction(s);  
16

17        D.    An award of damages, in an amount to be proven at  
18        trial, for the Defendant's infringement of Plaintiff's following  
19        intellectual property rights, the damages including Plaintiff's  
20        actual damages, Defendant's profits attributable to the  
21        infringement, Plaintiff's costs including a reasonable  
22        attorneys' fee, and any enhancements the Court finds reasonable:  
23

24            a. The PINCH YOURSELF mark;

25            b. The L'Amore Trade Dress; and

26            c. The copyright of the L'Amore Commercials;  
27  
28



1 E. An award of damages to compensate for Defendant's  
2 unfair competition in an amount to be proven at trial, including  
3 Plaintiff's actual damages and Defendant's profits attributable  
4 to the unfair competition;

5 F. An order awarding Plaintiff punitive damages on  
6 account of Defendant's willful violations of law;

7 G. An order awarding Plaintiff prejudgment and post  
8 judgment interest;

9 H. An order for corrective advertising in a form, manner,  
10 and frequency that is acceptable to Plaintiff and the Court; and

11 I. All other relief, in law or in equity, to which  
12 Plaintiff may be entitled, or which the Court deems just and  
13 proper.  
14

15  
16 Respectfully,

17 Vista IP Law Group LLP

18 August 29, 2011

19 by: s/Neal M. Cohen

20 Attorneys for Plaintiff

21 SAN PASQUAL CASINO DEVELOPMENT  
22 GROUP INC., an enterprise fund of  
23 the San Pasqual Band of Mission  
24 Indians, a Federally-Recognized  
25 Indian Tribe  
26  
27  
28

**JURY DEMAND**

Pursuant to F.R.Civ.P. Rule 38(b), and L.R. 38.1, Plaintiff  
demands a jury trial on all issues triable to a jury.

Respectfully,

Vista IP Law Group LLP

August 29, 2011

by: s/Neal M. Cohen

Attorneys for Plaintiff

SAN PASQUAL CASINO DEVELOPMENT  
GROUP INC., an enterprise fund of  
the San Pasqual Band of Mission  
Indians, a Federally-Recognized  
Indian Tribe

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

SAN PASQUAL CASINO DEVELOPMENT GROUP INC., an enterprise fund of the San Pasqual Band of Mission Indians...

(b) County of Residence of First Listed Plaintiff San Diego, CA

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Neal M. Cohen 949.724.1849

Vista IP Law Group LLP, 2040 Main St., #710 Irvine, CA 92614

**DEFENDANTS**

VIEJAS BAND OF KUMEYAAY INDIANS, a Federally-Recognized Indian Tribe d/b/a Viejas Casino

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

**'11CV1983 JAH POR**

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |  | PTF                        | DEF                        |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation   | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 USC 1125

Brief description of cause:

Trademark Infringement

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

08/29/2011

s/Neal M. Cohen

**FOR OFFICE USE ONLY**

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE